Reserved Judgment

IN THE HIGH COURT OF UTTRANCHAL AT NAINITAL

Appeal From Order No. 160 of 2004

Regional Manager,
U.P. State Road Transport Corporation
Through its Regional Manager,
Nainital.

…….. Appellant

Versus

Atul Kandpal (Minor)
Through his natural guardian and
Father Sri Girish Chandra Kandpal,
S/o late Sri Haridatt Kandpal
R/o Bithoria No. 1, Bishtdhara
P.O. Haripura Naik, Haldwani,
District Nainital.

…… Claimant / Respondent

Mr. A.N. Sharma, learned counsel for the appellant.
Mr. Rajesh Joshi, Advocate holding brief of
Mr. T.A. Khan, Advocate for claimant / respondent.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 173 of the Motor Vehicles Act, 1988, is directed against the judgment and award dated 20.03.2004, passed by the Motor Accident Claims Tribunal / Additional District Judge, 1st Fast Track Court, Nainital, whereby in the Claim Petition No. 98 of 2002, a sum of Rs. 40,000/- has been awarded as compensation to the claimant - respondent, with 7% interest per annum thereon.

2) Brief facts of the case, are that on 08.04.2002 at about 6:30 – 6:45 a.m., claimant – respondent Atul Kandpal

(a minor) was going towards Gandhi Inter College, Haldwani to appear in his examination. Near Satkar Restaurant, a bus having registration No. U.P. 02-D / 6495, owned by the U.P. State Road Transport Corporation (appellant), which was being driven rashly and negligently by its driver dashed at the claimant. Consequently, the claimant suffered injuries in the accident and was rushed by his colleagues to nearby Khurana Hospital and the next day he was taken to Soban Singh Jeena Base Hospital, Haldwani, He got the right hand fractured in the accident. Due to the injuries, the claimant failed to appear in the examination and, therefore lost one year of his education. A Claim Petition was filed under Section 166 of the Motor Vehicles Act, 1988, before the Motor Accident Claims Tribunal, Nainital by the claimant through his father, for a compensation to the tune of Rs. 1,00,000/-. The respondent, U.P. State Road Transport Corporation, opposed the claim petition and filed its written statement denying the accident itself. Learned Tribunal framed following two issued during the trial:

1. *Whether, on 08.04.2002 at about 6:30 a.m., near Satkar Restaurant on Nainital Road, Haldwani, a bus registration No. U.P. 02-D / 6495 was being driven rashly and negligently by its driver which dashed at Atul Kandpal (claimant) due to which he suffered serious injuries?*
2. *To what relief, if any, the claimant is entitled?*

3) After recording the evidence and hearing the parties, the Tribunal concluded that the accident did occurred on

the alleged date and time due to the rash and negligent driving on the part of the driver of the bus No. U.P. 02-D / 6495, owned by the U.P. State Road Transport Corporation. The Tribunal also found that young injured boy not only suffered physical injuries but also lost one year of his education. The Tribunal awarded a sum of Rs. 5,000/- on account of expenses incurred on the medical treatment of the claimant, a sum of Rs. 10,000/- on account of pain and agony suffered by the claimant and a sum of Rs. 25,000/- for the loss of one year of the education to the claimant. As such, total sum of Rs. 40,000/- was awarded by the learned Tribunal. Aggrieved by which, this appeal has been preferred.

4) I heard learned counsel for the parties and perused the evidence on record.

5) Learned counsel for the appellant argued that the bus owned by the U.P. State Road Transport Corporation was not involved in the accident. In this connection, he drew attention of this Court to the statement of the driver of the bus in question. The written statement filed by the appellant before the trial court shows that earlier it took the plea that the bus registration No. U.P. 02-D / 6495 was going, on the day of accident, on his way from Mussoorie to Nainital. However, later on, the written statement was amended and it was admitted that the bus was going on from Nainital to Mussoorie. It is further admitted in the statement of the witness, examined on behalf of the respondent, that the bus started from Nainital at about 5:30 a.m. in the morning, on the date of the accident. D.W. 1,

Ram Prasad, the driver of the vehicle in question, has also admitted that the bus left Haldwani at 7:30 a.m. This part of the statement of the witness partly corroborates the statement of P.W. 1, Atul Kandpal (the injured) that a Roadways bus No. U.P. 02 D / 6495 dashed at him from behind near Satkar Restaurant, Haldwani. P.W. 2, Girish Chandra Kandpal, who is father of the claimant, has stated that on the date of accident when he reached Roadways Bus Station to enquire about the bus, the employees of the Roadways Corporation misled him as to the number of the bus and he accordingly lodged the First Information Report. From the evidence on record, it is clear that the High School Board examination was going on the date of the accident and, it is also uncontroverted statement in the court, that the injured was going on to appear in the Board examination. It is also proved from the evidence on record, which includes X-ray films and medical record, indicating that the claimant suffered fracture and could not appear in the examination due to which he has lost his one year of education. The learned Tribunal has, after going through the record, rightly assessed the pecuniary loss of Rs. 5,000/- on account of expenses incurred on medical treatment of the claimant. The amount of Rs. 10,000/- awarded to the claimant on account of pain and agony suffered by the young boy cannot be said to be unreasonable. Since, it is clear from the evidence on record, that the claimant lost his one year of education due to the accident and was in class XIth in the month of October 2003, when the statement was recorded. As such,

an amount of Rs. 25,000/- for the loss of his one year of education can also be not said to be unreasonable.

6) Therefore, this Court is in full agreement with the findings of the learned Tribunal and, in the opinion of this Court, the appeal is liable to be dismissed. Accordingly, the appeal is dismissed. No order as to costs. Amount of Rs. 20,000/- deposited by the appellant in this Court on 14.05.2004 shall be remitted to the Tribunal concerned, so that the amount may be withdrawn by the claimant. Also, Lower Court Record be sent back to the Tribunal concerned. The remaining sum, if not paid within one month from today, the claimant will be entitled to 9% interest per annum thereon, thereafter.

(Prafulla C. Pant, J.)

Dt. March/04,2006.
H. Negi